



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Harvard Interiors Manufacturing Co.
File: B-222448.5
Date: October 30, 1986

DIGEST

Protest of the contracting agency's decision not to restrict acquisition of missile launchers to domestic firms and that the low bid was nonresponsive is rendered academic where the two low bidders--both foreign firms--are ineligible to receive the award because they were determined to be nonresponsive.

DECISION

Harvard Interiors Manufacturing Co. (Harvard), the third low bidder, protests the proposed award of a contract for missile launchers to Urdan Industries, Ltd. (Urdan), or Israel Military Industries (IMI), under invitation for bids (IFB) No. DAAH01-86-B-0002 issued by the United States Army Missile Command (Army). Harvard argues that the Army improperly reversed an alleged decision to restrict the procurement to domestic producers under the defense industrial mobilization program, an alleged decision which would have eliminated Urdan and IMI from the competition and placed Harvard in line for award. Alternatively, Harvard contends that Urdan's bid was improperly determined to be responsive because Urdan failed to comply with the level pricing provision of the IFB.

We dismiss the protest as academic.

By letter dated October 29, 1986, the Army advised our Office that the contracting officer has determined Urdan to be a nonresponsive bidder as the result of a preaward survey which found that the contractor lacked adequate plant facilities to perform the requirements of the solicitation and had not obtained a vendor quote for the thermal insulator coating compound required by Amendment No. 004 to the IFB. Additionally, the agency reports that a preaward survey of IMI found that this firm did not possess a vendor quote for the coating

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compound and the contracting officer thereafter determined IMI nonresponsible for failure to comply with the requirements of the solicitation. In view of these determinations, the Army requests that Harvard's protest be dismissed as academic.

We note that while the issues raised by Harvard do not speak to either Urdan's or IMI's ability to perform the contract or to meet the specification requirements of Amendment No. 004, we recognize that the thrust of Harvard's protest is that neither of the lower bidders should be considered for award. Since, as a practical matter, both firms are no longer eligible to receive an award under the solicitation, and Harvard is now in line for the award, we find the protest is academic.

Accordingly, the protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel